

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

ASHLEY CABALLERO, an individual, on
behalf of herself, all other aggrieved
employees, and the general public,

Plaintiffs,

v.

FIDELITONE LAST MILE, INC., a Delaware
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. CIVSB2102002

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: February 10, 2022
Time: 10:00 a.m.
Judge: Hon. David S. Cohn
Dept.: S26

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 the Honorable David S. Cohn presiding, on February 10, 2022. The Court having considered the
4 papers submitted in support of the Motion, HEREBY ORDERS THE FOLLOWING:

5 1. The following Class is conditionally certified for purposes of settlement only: All
6 individuals who worked for Defendant Fidelitone Last Mile, Inc. ("Defendant") as Contract
7 Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged
8 employees of Defendant) from July 31, 2016, through November 6, 2021, and all entities owned
9 and controlled by Contract Carriers which contracted directly with Defendant to perform freight
10 delivery services from July 31, 2016, through November 6, 2021.

11 2. The Court grants preliminary approval of the Settlement and the Class based upon
12 the terms set forth in the Settlement Agreement filed herewith. Capitalized terms shall have the
13 definitions set forth in the Settlement.

14 3. The Settlement appears to be fair, adequate and reasonable to the Class. The
15 Settlement falls within the range of reasonableness and appears to be presumptively valid,
16 subject only to any objections that may be raised at the final approval hearing and final approval
17 by this Court.

18 4. For purposes of this Settlement, the First Amended Complaint ("FAC"), attached
19 as Exhibit 1 to the Settlement, is deemed filed and responded to via Defendant's Answer
20 currently on file.

21 5. Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas are
22 conditionally approved as the Class Representatives for the Class.

23 6. The proposed Class Representative Enhancements of \$10,000 each payable to the
24 Plaintiffs for their services as the class representatives are conditionally approved.

25 7. David Mara and Matthew Crawford of Mara Law Firm, PC, Michael H.
26 Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian Law Firm, P.C., are
27 conditionally approved as Class Counsel for the Class.

1 8. The proposed awards of up to \$333,300 in attorneys' fees and up to \$30,000 in
2 actual costs payable to Class Counsel are conditionally approved.

3 9. A final approval hearing on the question of whether the Settlement, attorneys'
4 fees and costs to Class Counsel, and the Class Representative Enhancements should be finally
5 approved as fair, reasonable and adequate as to Class Members is scheduled in Department S26
6 on the date and time set forth in Paragraph 16 below.

7 10. The Court confirms Phoenix Class Action Administration Solutions ("Phoenix")
8 as the Settlement Administrator.

9 11. The proposed payment of no more than \$15,000 in costs to Phoenix for its
10 services as the Settlement Administrator is conditionally approved.

11 12. The Court hereby preliminarily approves the allocation of \$50,000 of the Gross
12 Settlement Fund to Plaintiffs' PAGA claims. Of this amount, 75% will be paid to the Labor and
13 Workforce Development Agency ("LWDA") and the remaining 25% will be distributed to the
14 Class Members who worked from April 28, 2019, through November 6, 2021 (the "Aggrieved
15 Employees"). At the Final Approval Hearing, the Court will determine the sufficiency of the
16 PAGA payment. If the Court decides to award less than the amounts set forth by the Parties, then
17 excess amount will become part of the available Net Settlement Amount.

18 13. The Court approves, as to form and content, the Notices in substantially the form
19 attached as Exhibit 3 to the Settlement. The Court approves the procedure for Class Members to
20 participate in, to opt out of, and to object to, the Settlement as set forth in the Notice of
21 Settlement.

22 14. The Court directs the mailing of the Notice by first class mail to Class Members
23 in accordance with the implementation schedule set forth in Paragraph 16 below. The Court
24 finds the dates selected for the mailing and distribution of the Notice, as set forth in the
25 Implementation Schedule, meet the requirements of due process and provide the best notice
26 practicable under the circumstances and shall constitute due and sufficient notice to all persons
27 entitled thereto.
28

1 15. To facilitate administration of the Settlement pending final approval, the Court
2 hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or
3 administrative proceedings (including, but not limited to, filing claims with the Division of
4 Labor Standards Enforcement of the California Department of Industrial Relations) regarding
5 claims released by the Settlement unless and until such Class Members have filed valid Requests
6 for Exclusion with the Settlement Administrator and the time for filing valid Requests for
7 Exclusion with the Settlement Administrator has elapsed. This provision shall not apply to
8 claims not alleged in the Action.

9 \\
10

11 \\
12

13 \\
14

15 \\
16

17 \\
18

19 \\
20

21 \\
22

23 \\
24

25 \\
26

27 \\
28

1 16. The Court orders the following **Implementation Schedule** for further
2 proceedings:

3	a.	Deadline for Defendant to submit 4 Class Information to Settlement 5 Administrator:	[10 business days after Preliminary Approval Order]
6	b.	Deadline for Settlement 7 Administrator to Mail the Notice to 8 Class Members	[30 calendar days after Preliminary Approval Order]
9	c.	Deadline for Class Members to 10 Postmark Requests for Exclusion Forms	[45 calendar days after mailing of Notice to Class Members]
11	d.	Deadline for Receipt by Court and 12 Counsel of any Objections to the Settlement	[45 calendar days after mailing of Notice to Class Members]
13	e.	Deadline for Class Counsel to file 14 Motion for Final Approval of Settlement	[16 Court days before Final Approval Hearing]
15	f.	Deadline for Class Counsel to file 16 Motion for Attorneys' Fees, Costs and Class Representative Payment	[16 Court days before Final Approval Hearing]
17	g.	Final Approval Hearing and Final 18 Approval	_____, 2022 _____

19
20 **IT IS SO ORDERED.**

21
22 Dated: _____, 2022

23 BY _____
24 Honorable David S. Cohn
25 San Bernardino Superior Court Judge
26
27
28